

**Separating The Defendant
From His Property:
How To Make Asset Forfeiture
Part Of A Criminal Case**

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WHAT IS FORFEITABLE¹

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I. The Proceeds of Virtually Every Common Criminal Offense Are Forfeitable.

A. Drug Offenses

1. The proceeds of domestic drug offenses are subject to criminal forfeiture pursuant to by 21 U.S.C. § 853(a)(1), and to civil forfeiture pursuant to 21 U.S.C. § 881(a)(6).
2. The proceeds of foreign drug offenses are subject to civil forfeiture pursuant to 18 U.S.C. § 981(a)(1)(B)

B. Specified Unlawful Activities (SUAs) and Racketeering Acts listed at 18 USC § 1956(c)(7) and 18 USC §1961(1) ***See Attachment 1***

1. These include the following offenses, the proceeds of which can be forfeited either criminally, by 18 U.S.C. §982(a)(2) - (a)(4), or civilly, by 18 U.S.C. 981(a)(1)(C) - (a)(1)(F), generally regardless of when they occurred:
 - a. Arson 18 U.S.C. §§ 842, 844
 - b. Bank fraud 18 U.S.C. §§ 215, 656-57, 1005-07, 1014, 1032, 1344
 - c. Counterfeiting 18 U.S.C. §§ 471-481, 485-488, 501-02, 510
 - d. Smuggling 18 U.S.C. §§ 542, 545
 - e. Credit card fraud 18 U.S.C. §§ 1028-30
 - f. Auto theft/chop shops 18 U.S.C. §§ 511, 553, 2119, 2312, 2313
 - g. Telemarketing fraud, criminally by 18 U.S.C. § 982(a)(8), and civilly by 18 U.S.C. § 981(a)(1)(C). Telemarketing fraud offenses are defined at 18 U.S.C. § 2325, and include violations of 18 U.S.C. §§ 1028, 1029, 1341, 1343, and 1344, or conspiracies to violate those statutes, in connection with the conduct of telemarketing.
 - h. Health care fraud, criminally by 18 U.S.C. § 982(a)(7) [for offenses post-dating 8/21/96], and civilly by 18 U.S.C. § 981(a)(1)(C). Health care fraud offenses are defined at 18 U.S.C. § 24, and include violations of 18 U.S.C. §§ 669, 1035, 1347, and 1518,

conspiracies to violate those statutes, and violations of 18 U.S.C. §§ 287, 371, 664, 666, 1001, 1027, 1341, 1343, and 1954 if the violation or conspiracy relates to a health care benefit program.

2. The following offenses are also included, the proceeds of which can be forfeited civilly pursuant to 18 U.S.C. § 981(a)(1)(C), regardless of when they occurred, and criminally, but, unless otherwise noted, only if they occurred *after* August 23, 2000²:

a. Frauds

- i. Mail & Wire Fraud, in violation of 18 U.S.C. §§ 1341 and 1343

If the mail or wire fraud affected a financial institution, then the proceeds can be criminally forfeited even if the offense pre-dated August 23, 2000.

- ii. Interstate transportation of stolen property in violation of 18 U.S.C. §§ 2312-15.
- iii. Pension fund embezzlement, in violation of 18 U.S.C. § 664.
- iv. Bankruptcy fraud, in violation of 18 U.S.C. § 152.
- v. Securities fraud
- vi. Food stamp fraud, proceeds of which can be forfeited criminally, by 7 U.S.C. § 2024(h) for offenses post-dating 10/1/96, and by 18 U.S.C. § 981(a)(1)(C) for offenses involving more than \$5000 and post-dating 8/23/00.

b. Thefts

- i. Theft of public monies 18 U.S.C. § 641

² It is the government's view that the civil forfeiture of proceeds under 18 U.S.C. § 981(a)(1)(C) applies to conduct occurring before August 23, 2000 (the effective date of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA"), of which § 981(a)(1)(C) was a part), but criminal forfeiture under that provision does not, because of the *ex post facto* clause. See AFML Online Civil Form 4001. But see *United States v. Sudeen*, 2002 WL 1897095 (E.D. La. 2002) (whether forfeiture of proceeds of fraud conspiracy that straddles CAFRA's effective date would violate *ex post facto* clause to be determined upon conviction; pre-trial motion is premature).

- ii. Theft from interstate shipment 18 U.S.C. § 659
- iii. Mail Theft 18 U.S.C. § 1708

c. State felony racketeering activity

- i. Robbery, Extortion, and Murder: Civil forfeiture is available for the proceeds of robbery, extortion, and murder in violation of state law, whenever the offenses occurred. Criminal forfeiture is also available for violations of 18 U.S.C. § 1951 (Hobbs Act) and 18 U.S.C. §§ 2111 (Special Territorial & Maritime Jurisdiction) post-dating 8/2/3/00.
- ii. Gambling. Civil forfeiture is available for the proceeds of gambling that constitutes a felony by state law, whenever the offenses occurred. Criminal forfeiture is available for the proceeds of violations of 18 U.S.C. §§ 1952 and 1955, post-dating 8/2/3/00.
- iii. Extortionate credit transactions: Civil forfeiture is available for the proceeds of loan sharking that constitutes a felony by state law, whenever the offenses occurred. Criminal forfeiture is available for the proceeds of violations of 18 U.S.C. §§ 891-94, post-dating 8/2/3/00.
- iv. Arson: Proceeds of arson affecting interstate commerce in violation of 18 U.S.C. §§ 842 and 844 has long been subject to forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C). CAFRA made arson lacking a nexus with interstate commerce also triggers forfeiture.
- v. Bribery: Civil forfeiture is available for the proceeds of bribery in violation of state law where the offenses occurred. Criminal forfeiture is available for the proceeds of violations of 18 U.S.C. §§ 201-15, and 18 U.S.C. §§ 891-94, post-dating 8/2/3/00. *See Clark v. United States*, 102 US 322 (1880) (defendant convicted of bribery has no right to return of the bribe monies); *United States v. Kim*, 738 F.Supp. 1002 (E.D. Va. 1990) (defendant convicted of paying an unlawful gratuity has no right to obtain return of the gratuity); 18 U.S.C. § 3665 (authorizing the deposit of bribe monies into the registry of the court).
- vi. Dealing in Obscene Matter: The proceeds of obscenity distribution is subject to forfeiture, whenever the offenses occurred, either criminally by 18 U.S.C. § 1467 for

violation of 18 U.S.C. §§ 1460-69, or civilly by 18 U.S.C. § 981(a)(1)(C) for distribution in violation of state law.

- d. Immigration and Visa Offenses: The proceeds of immigration and visa offenses in violation of 18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541, 1542, 1543, 1544, and 1546 are forfeitable either civilly (whenever they occurred) by 18 U.S.C. § 981(a)(1)(C), or criminally by 18 U.S.C. § 982(a)(6). Some criminal forfeitures may be accomplished for conduct occurring before August 23, 2000 because Section 982(a)(6) was passed in September 1996, but the law remained largely unworkable until August 2000.
 - e. Prostitution 18 U.S.C. §§ 1952, 2421-24
 - f. Cigarette smuggling 18 U.S.C. §§ 2341-46
 - g. Copyright infringement 18 U.S.C. §§ 2318-21
 - h. Arms Export Control Act 22 U.S.C. § 401
 - i. Environmental crimes
 - a. Resources Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 *et seq.*
 - b. Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*
 - c. Ocean Dumping Act, 33 U.S.C. § 1401 *et seq.*,
 - d. Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*
- C. Many acts violate various statutes, at least one of which triggers forfeiture of proceeds. For example, even if property is not subject to forfeiture as the proceeds of a false claim submitted in violation of 18 U.S.C. § 287, it will likely be forfeitable as proceeds of the theft of government property in violation of 18 U.S.C. § 641.
- D. There are almost certainly miscellaneous offenses that are **Not** SUAs or Racketeering Acts but which will still trigger forfeiture of proceeds, *e.g.*, School Lunch Act fraud. Proceeds of violations of 42 U.S.C. § 1760(g), post-dating 1998, can be forfeited only criminally, pursuant to 42 U.S.C. § 1786(p). However, because School Lunch Act fraud is not an SUA or Racketeering Act, there is no civil forfeiture for such proceeds pursuant to 18 U.S.C. § 981(a)(1)(C).
- E. Exceptions: Offenses that are *not* SUAs or Racketeering Acts, and which lack specific forfeiture provisions, do not trigger proceeds forfeitures, including:

1. Tax Offenses: the proceeds of tax offenses are not forfeitable for their involvement in tax offenses.
2. Conspiracy to commit offenses against the United States or to defraud the United States, in violation of 18 U.S.C. § 371, – *other than a conspiracy to commit SUAs* – generally does not trigger forfeiture.
 - a. A conspiracy to commit a specified unlawful activity triggers forfeiture pursuant to 18 U.S.C. § 981(A)(1)(C).
 - b. Conspiracy to launder money in violation of 18 U.S.C. § 1956 triggers forfeiture of all property involved in the offense.
 - c. Conspiracy to traffic in narcotics in violation of 21 U.S.C. § 846 triggers forfeiture of proceeds and facilitating property.

II. What Are Proceeds?

- A. Proceeds need not be money. *United States v. Rounsavall*, 115 F.3d 561 (8th Cir. 1997) (real property purchased with drug money is “proceeds”); *United States v. Werber*, 787 F.Supp 353 (S.D.N.Y. 1992) (auto purchased with counterfeit securities was proceeds of securities offense); *United States v. Griffith*, 17 F.3d 865 (6th Cir. 1994) (inventory acquired in fraud scheme is proceeds of the SUA); *United States v. Akintobi*, 159 F.3d 401 (9th Cir. 1998) (stolen checks are proceeds of mail theft and bank fraud).
- B. The fact that “proceeds” were derived before the money laundering laws were passed does not mean that they cannot be laundered at some later point, making them subject to forfeiture. We can forfeit proceeds of SUAs committed before effective date of money laundering laws. *United States v. Monaco*, 194 F.3d 381 (2d Cir. 1999).
- C. Property *traceable* to “proceeds” also constitutes “proceeds” subject to forfeiture.
 1. Think broadly. *Counihan v. United States*, 194 F.3d 357 (2d Cir. 1999) (insurance payment upon destruction of forfeitable property by fire); *United States v. 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996) (real property purchased with structured funds). *But see United States v. Voigt*, 89 F.3d 1050 (3d Cir. 1996) (property purchased with tainted money commingled with clean money *not* traceable to tainted money).
 2. There is hope for the Third Circuit yet. *United States v. Stewart*, 185 F.3d 112 (3d Cir. 1999) (fraud proceeds deposited in bank account containing clean money are still traceable to the money laundering offense despite *Voigt*). Solve the *Voigt* problem by charging the purchase of the downstream property as a separate money laundering transaction.

4. "Proceeds" forfeitures limited

1. Straight proceeds theory limits recovery to property derived from or traceable to the unlawful activity. In contrast, all property involved in money laundering or used to facilitate a violation will be subject to forfeiture regardless of source. *See United States v. One 1980 Rolls Royce*, 905 F.2d 89, 90 (5th Cir. 1990) (claimant may avoid forfeiture to the extent that he could prove what portions of the property were purchased with legitimate funds); *United States v. Real Property Located at 22 Santa Barbara Drive*, 121 F.3d 719, 1997 WL 420580 (9th Cir. 1997) (unpublished)(Table) (forfeiture under 21 U.S.C. § 881(a)(6) limited to portion of property traceable to the offense; the government could have proceeded on a money laundering theory to forfeit the entirety of the property.); *United States v. One Parcel Known as 352 Northup St.*, 40 F.Supp.2d 74 (D.R.I. 1999) (where real property was purchased with a mixture of tainted money and clean money and government pursued straight proceeds theory, property would be apportioned after sale).

E. Appreciation and Interest

1. We are entitled to forfeit the enhanced value of forfeitable property, whether we proceed under a proceeds theory or allege that the property was involved in or traceable to money laundering, regardless of whether the appreciation is due to the hard work or foresight of the launderer. *United States v. Real Property Located at 22 Santa Barbara Drive*, 264 F.3d 860 (9th Cir. 2001) (proceeds); *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (money laundering); *United States v. Loe*, 49 F.Supp.2d 514 (E.D. Tex. 1999) (money laundering).
2. We are entitled to forfeit the value of the property involved in the transaction at the time of the transaction if the value decreased afterwards. *United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998).
1. The government is entitled to retain interest earned on forfeited monies. *United States v. \$25,829,681.80 in the Court Registry Investment System*, 2002 WL 31159116 *1 n. 1 (S.D.N.Y. 2002).

F. Gross v. Net Proceeds: Forfeiture is intended to punish all those who receive income from illegal activity, not just those whose criminal activity turns a profit. *United States v. Simmons*, 154 F.3d 765 (8th Cir. 1998); *United States v. McHan*, 101 F.3d 1027 (4th Cir. 1996). *But see United States v. Jarrett*, 133 F.3d 519 (7th Cir. 1998).

1. Whether we can forfeit gross proceeds or net proceeds of SUAs and Racketeering Acts depends on the type of offense triggering the forfeiture in the first place:

- a. We can forfeit **gross proceeds**, including any property obtained as the result of the commission of offenses involving illegal goods, illegal services, unlawful activities, telemarketing, and health care fraud schemes. 18 U.S.C. § 981(a)(2)(A) provides:

In cases involving illegal goods, illegal services, unlawful activities, and telemarketing and health care fraud schemes, the term “proceeds” means property of any kind obtained directly or indirectly, as the result of the commission of the offense giving rise to the forfeiture, and any property traceable thereto, and is not limited to the net gain or profit realized from the offense.

5. *See United States v. All Funds on Deposit in United Bank of Switzerland (Sawan Exchange Company)*, 188 F.Supp.2d 407 (S.D.N.Y. 2002) (if the forfeiture is brought under the SUA activity prong of § 981(a)(1)(C), “proceeds” always means “gross proceeds,” not “net profits,” because § 981(a)(2) authorizes the forfeiture of the gross proceeds of any “unlawful activity.”

- b. We can forfeit **net proceeds** of offenses involving lawful goods or lawful services that are sold in an illegal manner. This means the “amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. This clause was intended to apply at least to government contracts wherein defective or non-conforming goods or services were supplied. It likely will apply in all instances other than health care fraud and telemarketing offenses in which lawful goods or services are provided. 18 U.S.C. § 981(a)(2)(B) provides:

In cases involving lawful goods or lawful services that are sold or provided in an illegal manner, the term ‘proceeds’ means the amount of money acquired through the illegal transactions resulting in the forfeiture, less the direct costs incurred in providing the goods or services. The claimant shall have the burden of proof with respect to the issue of direct costs. The direct costs shall not include any part of the overhead expenses of the entity providing the goods or services, or any part of the income taxes paid by the entity.

- i. Claimant has burden of proof with respect to direct costs.

- ii. Overhead expenses and income taxes are not part of direct costs so they are not excluded from the calculation. Thus, a \$600 toilet seat really cost only \$1.22, after deducting overhead costs.
 - 2. Note that when proceeds are forfeited pursuant to 18 U.S.C. § 981(a)(1)(C) through 28 U.S.C. § 2461(c), “proceeds” is defined by 18 U.S.C. § 982(a)(2). This is not the case if the “proceeds” theory is based upon some other criminal forfeiture statute, *e.g.*, 21 U.S.C. § 853(a)(1).
- G. Forfeitures in bank or credit card fraud cases generally will be allowed only to the extent that there are financial losses to the lender. 18 U.S.C. § 981(a)(2) (“*In cases involving fraud in the process of obtaining a loan or extension of credit, the court shall allow the claimant a deduction from the forfeiture to the extent that the loan was repaid, or the debt was satisfied, without any financial loss to the victim*”).
- a. However, we can forfeit bank fraud proceeds in excess of the financial loss to the lender where the proceeds to the crook exceeds the loss to the lender. For example, if crook borrows \$100,000 by fraud, invests the \$100,000 in Microsoft stock and makes \$50,000 (which used to happen), and then repays the bank the \$100,000, we should be able to forfeit the \$50,000 derived by the crook.
 - b. No deductions for loan repayments should be made from forfeitures of the laundered proceeds of bank fraud. Moreover, money laundering forfeitures can encompass more property than that reached by bank fraud anyway. *United States v. Hawkeye*, 148 F.3d 920 (8th Cir. 1998) (money laundering forfeiture pursuant to 18 USC § 982(a)(1) is not limited to the forfeiture of “proceeds” under 18 USC § 982(a)(2)).
 - 3. Money obtained as a consequence of a false loan application is “proceeds” of the offense, and equity acquired with such borrowed funds is also proceeds. *See United States v. 3814 Thurman Street*, 164 F.3d 1191 (9th Cir. 1999).
- H. Bankruptcy Fraud: Usually, we say that all the property hidden from the creditors constitutes the proceeds of the bankruptcy fraud. *United States v. Ladum*, 141 F.3d 1328 (9th Cir. 1998). In some cases, however, the value of the property hidden far exceeds the amount of debt that the debtor sought to avoid. Can the proceeds of the bankruptcy fraud exceed the debtor’s excused debts? CD Cal has had some recent success in this area.
3. Proving Your Drug “Proceeds” Case With Circumstantial Evidence

1. The inability to trace seized funds directly from one or more illegal transactions to the place from which the funds were seized is not a bar to forfeiture. The government may rely upon circumstantial evidence to establish the requisite connection between the crimes alleged and the monies to be forfeited.
 1. Insufficient legitimate income/failure to account for possession of large amount of currency. *See United States v. All Right, Title and Interest . . . 785 Nicholas Ave.*, 983 F.2d 396, 405 (2nd Cir. 1993) (collecting cases); *United States v. \$13,477.00 in U.S. Currency*, 2002 WL 31190140 (S.D.N.Y. 2002).
 2. Additional factors will bolster lack of legitimate income. *See United States v. Funds in the Amount of \$29,266*, 96 F.Supp2d 806, 809 (N.D. Ill. 2000) (amount of cash, dog sniff, flight, false statements, together with lack of apparent legitimate source indicate that money is criminal proceeds of some kind, and drugs are most likely source); *United States v. Funds in the Amount of \$122,500*, 2000 WL 984411 (N.D. Ill. 2000) (false CMIR, involvement as drug courier before and after seizure); *Cf. United States v. Hurtado*, 2002 WL 1275025 (2nd Cir. June 10, 2002) (Table) (lack of legitimate income or source of money plus positive alert by drug dog sufficient to establish beyond a reasonable doubt in a criminal case that \$500,000 in currency was drug proceeds; expert opinion re: validity of dog sniff satisfied Rule 702 of the Federal Rules of Evidence and the Supreme Court's decision in *Daubert*).

IV. Property "Involved in" or "Facilitating" the Offense, **"From A to Z"**

- A. **A**ccess Device Fraud: Access device fraud in violation of 18 U.S.C. § 1029 post-dating 10/30/98 triggers criminal (but not civil) forfeiture of personal property used to facilitate the offense, by 18 U.S.C. § 1029(c)(1)(C). Because there is no civil forfeiture of facilitating property, there can be no administrative forfeiture of property that facilitates access device fraud.
- B. **B**ookmaking: We can forfeit all property used to facilitate gambling businesses operated in violation of 18 U.S.C. § 1955 - civilly by 18 U.S.C. § 1955(d) and criminally for offenses post-dating 8/23/00 by 28 U.S.C. § 2461.
 1. Gambling ships operated in violation of 18 U.S.C. § 1082(a) are subject to forfeiture civilly by 18 U.S.C. § 1082 and criminally by 28 U.S.C. § 2461.
 2. Gambling devices are also subject to civil forfeiture by 15 U.S.C. § 1177, *but be aware of the unique storage problems presented by slot machines.*

- C. **C**ounterfeiting Paraphernalia: For offenses post-dating 8/23/00, we can forfeit property facilitating counterfeiting offenses by 28 U.S.C. § 2461 and 18 U.S.C. § 472. For offenses pre-dating 8/23/00, we can forfeit facilitating property only civilly.
- D. **D**rug offenses trigger forfeiture of property used to facilitate the offenses, either criminally pursuant to 21 U.S.C. § 853(a)(2), or civilly pursuant to 21 U.S.C. § 881(a). Specifically, consider the forfeiture of real property (21 U.S.C. § 881(a)(7)); conveyances (21 U.S.C. § 881(a)(4)); and firearms (21 U.S.C. § 881(a)(11)).
- E. **E**spionage
1. Espionage in violation of 18 U.S.C. § 794 (spying) triggers criminal forfeiture of facilitating property. Violations of 18 U.S.C. § 793, however, trigger forfeiture only of proceeds of the violation.
 2. Economic Espionage: Economic espionage, or the theft of trade secrets, in violation of 18 U.S.C. § 1831-32 post-dating 10/11/96 triggers criminal (but not civil) forfeiture of real and personal property used to facilitate the offense by 18 U.S.C. § 1834. Because there is no civil forfeiture of facilitating property, there can be no administrative forfeiture of property that facilitates economic espionage.
 - a. Property used to reproduce or assemble copyright-infringing materials may be forfeited civilly pursuant to 17 U.S.C. §§ 506, 509 and 603, and, for offenses post-dating 8/23/00, criminally pursuant to 28 U.S.C. § 2461.
 - b. Property bearing counterfeit labels is subject to forfeiture by 18 U.S.C. § 2318.
- F. **F**ood Stamp Fraud: Food Stamp fraud in violation of 7 U.S.C. § 2042, post-dating 1998, triggers criminal (but not civil) forfeiture of property used to facilitate the offense, by 7 U.S.C. § 2-24(h). Because there is no civil forfeiture of facilitating property, there can be no administrative forfeiture of property that facilitates food stamp fraud.
- G. **G**uns: We can forfeit firearms involved in any violation of federal law civilly by 18 U.S.C. § 924(d) and also criminally for offenses post-dating 8/23/00 by 28 U.S.C. § 2461.

1. If we move to forfeit firearms in all of our criminal cases across the board, we should solve the perennial problem of what to do with seized firearms once the case is over.
 2. We should argue that the 120-day rule from 18 U.S.C. 924(d)(1) does not apply to criminal forfeitures because it is displaced by the “procedures set forth in 21 U.S.C. § 853.”
- H. **H**unting by Air: Hunting birds or animals from an aircraft in violation of 16 U.S.C. § 742 triggers the forfeiture of the guns and aircraft involved, either civilly, by 18 U.S.C. § 742(e), or, for offenses post-dating 8/23/00, criminally by 28 U.S.C. § 2461. *See also* 16 U.S.C. §§ 1540(e)(4), regarding civil forfeiture of illegally taken endangered species, and 16 U.S.C. § 3374 regarding civil forfeiture of illegally taken fish and wildlife. Criminal forfeiture for such violations post-dating 8/23/00 is authorized by 28 U.S.C. § 2461.
- I. **I**dentify Theft Fraud: Identity Theft fraud in violation of 18 U.S.C. § 1028 post-dating 10/30/98 triggers criminal (but not civil) forfeiture of personal property used to facilitate the offense by 18 U.S.C. § 1028(b)(5). Because there is no civil forfeiture of facilitating property, there can be no administrative forfeiture of property that facilitates identity theft fraud.
- J. **J**ail-Made Goods, UnMarked: 18 U.S.C. § 1762 provides for the forfeiture of all prison-made goods that fail to reflect that they were made in prison.
- K. **K**ock-fighting: Violations of the Animal Welfare Act, 7 U.S.C. § 2156, trigger forfeiture of animals used in animal fighting ventures.
- L. **L**aundering of Monetary Instruments: Money laundering offenses trigger forfeiture of property “involved in the offense, either criminally pursuant to 18 U.S.C. § 982(a)(1), or civilly, pursuant to 18 U.S.C. § 981(a)(1)(A).
1. “Involved” in the offense includes both the money laundered and the launderer’s fee; it is *not* limited to the launderer’s profits. *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997); *United States v. Hendrickson*, 22 F.3d 170 (7th Cir. 1994). “Involved in the offense” includes:
 - a. Proceeds of the underlying specified unlawful activity involved in the financial transaction conducted in violation of 18 U.S.C. §§ 1956-57. *United States v. Stewart*, 185 F.3d 112 (3d Cir. 1999).
 - b. SUA proceeds left behind in the bank account from which a

transaction was conducted. *United States v. Trost*, 152 F.3d 715 (7th Cir. 1998).

- c. Clean money commingled with the laundered proceeds
 - i. Property knowingly commingled by the crook in a money laundering transaction in violation of 18 U.S.C. § 1956 usually is “involved” in that transaction *United States v. 15603 85th Ave.*, 933 F.2d 976 (11th Cir. 1991).
 - ii. Property is usually considered to be involved where it is commingled to enhance the legitimate look of money involved in transactions in violation of 18 U.S.C. § 1956. *United States v. Trost*, 152 F.3d 715 (7th Cir. 1998). *See United States v. Bornfield*, 1145 F.3d 1123 (10th Cir. 1998) (defendant pooled the clean and tainted funds to disguise the nature and source of his scheme); *United States v. Tencer*, 107 F.3d 1120 (5th Cir. 1997) (purpose of the deposit was to conceal the tainted proceeds among legitimate funds). *But see United States v. US Currency Deposited in Account No. 1115000763247*, 176 F.3d 941 (7th Cir. 1999) (questioning validity of facilitation theory without citing *Trost*).
 - A. Since concealment is not an element of a violation of 18 U.S.C. § 1957, “clean” money commingled with money involved in transactions in violation of 18 U.S.C. § 1957 is not “involved” in the money laundering transaction.
- d. Property purchased in the unlawful financial transaction. *United States v. Kennedy*, 201 F.3d 1324 (11th Cir. 2000). This is so even if some of the purchase money was clean. *United States v. One 1987 Mercedes Benz 300E*, 820 F.Supp. 248 (E.D. Va. 1993).
- e. Property that facilitated the financial transaction and has a “substantial connection” to the transaction. *United States v. Wyly*, 193 F.3d 289 (5th Cir. 1999) (real property); *United States v. G.P.S. Automotive Corp.*, 66 F.3d 483 (2d Cir. 1995) (business used to sell stolen auto parts and launder proceeds).
- f. Property that facilitated the underlying specified unlawful activity probably is not “involved” in the laundering offense. *United States v. Loe*, 49 F.Supp.2d 514 (E.D. Tex. 1999). *But see United States v. \$488,342.85*, 969 F.2d 474, 477 (7th Cir. 1992) (suggesting that

property involved in money laundering may include funds that facilitated the SUA); *United States v. All Assets of Blue Chip Coffee, Inc.*, 836 F.Supp. 104 (E.D. N.Y. 1993) (property used to facilitate underlying section 659 offense forfeited for involvement in money laundering).

2. Property “traceable” to property involved in money laundering is also subject to forfeiture.
 - a. Generally, the government is entitled to choose whether the appropriate accounting convention to trace the dirty money is “first-in, first-out.” or “last in, first out.” This allows the government to trace the dirty money into the property that it can actually find. For application of the “tracing” rules generally favorable to the government, *see United States v. 170 Westfield Drive*, 34 F.Supp.2d 107 (D. R.I. 1999); *United States v. Moffitt, Zwerling & Kemler, P.C.*, 875 F.Supp. 1152 (E.D. Va. 1995).
 - b. In the 9th Circuit, the dirty money is presumed to be money that the government cannot find, so that the government is left with the opportunity to seize only clean money. *United States v. Rutgard*, 108 F.3d 104 (9th Cir. 1997) (a withdrawal of commingled money does not meet the \$10,000 threshold for violation of 18 U.S.C. § 1957 if the remaining balance exceeds the amount of the tainted funds). *Contra United States v. Wilkinson*, 137 F.3d 214 (4th Cir. 1998) (gov’t may presume that any withdrawal from a commingled account involves SUA proceeds); *United States v. Sokolow*, 81 F.3d 397 (3d Cir. 1996) (gov’t not required to prove that all money involved in the transaction was tainted); *United States v. Johnson*, 971 F.2d 562 (10th Cir. 1992) (gov’t not required to prove that no untainted funds were commingled with the unlawful proceeds of a § 1957 violation).
 - c. In the Third Circuit, property purchased with tainted money commingled with clean money is *not* forfeitable as traceable to tainted money, and instead can be forfeited only as a substitute asset. *United States v. Voigt*, 89 F.3d 1050 (3d Cir. 1996). Usually, property containing commingled tainted and clean money was itself involved in a subsequent money laundering transaction when the “tainted” money was added to the “clean” money. Thus, *Voigt*-type problems often can be solved by charging the subsequent transaction as a Section 1956 violation.
 - i. Even when the commingling is not accomplished through a new money laundering transaction, the transformed laundered it is forfeitable in its new form as property

“traceable” to the initial laundering transaction. *United States v. One 1997 E35 Ford Van*, 50 F.Supp.2d 789 (N.D. Ill. 1999) (car and residence purchased with money sent into the US in violation of 18 U.S.C. § 1956(a)(2)(A) is forfeitable as traceable to property involved in a money laundering transaction).

- b. Use 18 U.S.C. § 984 to forfeit the contents of accounts into which laundered cash was deposited when the laundered cash has since been moved. *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993).
- 3. Double Recovery: We should be able to recover criminally every time the property is involved in a separate transaction. *United States v. Check No. 25128 in the Amount of \$58,654.11*, 122 F.3d 1263 (9th Cir. 1997). Where the criminal purchases a car with SUA proceeds in a laundering transaction, we should be able to forfeit both the car and the proceeds because both were “involved” in the transaction. *But see United States v. Hawkey*, 148 F.3d 920 (8th Cir. 1998) (we can get one or the other, but not both).
- 4. Stings: 18 U.S.C. § 984 should authorize the forfeiture of money found in an account in which laundered sting money passed within the previous year. *United States v. 814,2544.76 in US Currency*, 51 F.3d 207 (9th Cir. 1995) (reversing on other grounds district court’s forfeiture of sting money pursuant to 18 U.S.C. § 984).
 - a. *But see United States v. \$3,148,884.40 US Currency (seized from Accounts of BITAL)*, 76 F.Supp.2d 1063 (C.D. Cal. 1999) (it is a defense to forfeiture that laundered returned the money to the undercover agent).
 - b. Section 984 may not be used to forfeit funds held by a financial institution in an interbank account unless the financial institution knowingly engaged in the money laundering offense.

M. Money Reporting Violations

- 1. CMIR violations: Undeclared cash moved internationally is “involved” in violations of 31 U.S.C. § 5316, and is forfeitable criminally pursuant to 18 U.S.C. § 982(a)(1) and civilly pursuant to 31 U.S.C. § 5317. *United States v. \$170,000*, 903 F.Supp. 373 (E.D. N.Y. 1995).
- 2. Structuring of cash deposits to avoid CTR requirements trigger the forfeiture of property “involved in the offense, criminally by 18 U.S.C.

§ 982(a)(1), and civilly by 18 U.S.C. § 981(a)(1)(A).

- a. The cash deposits structured in violation of 31 U.S.C. §§ 5313(a) and 5324(a) are “involved” in the offense. Real estate purchased with structured deposits are “involved” in the offense or traceable to such property. *United States v. 874 Gartel Drive*, 79 F.3d 918 (9th Cir. 1996). Cars purchased with structured deposits are “involved.” *United States v. 1988 Olds Cutlass Supreme*, 983 F.2d 670 (5th Cir. 1993).
- b. Use 18 U.S.C. § 984 to forfeit the contents of accounts into which the structured cash was deposited when the structured cash has since been moved. *Marine Midland Bank, N.A. v. United States*, 11 F.3d 1119 (2d Cir. 1993).
- c. Commingled money is not forfeitable for concealing structured cash. *United States v. All Funds on Deposit (Great Eastern Bank)*, 804 F.Supp. 444 (E.D.N.Y. 1992).

- 3. The assets of an unlicensed money transmitting business operating in violation of state law, are “involved” in violations of 18 U.S.C. § 1960, and are forfeitable criminally pursuant to 18 U.S.C. § 982(a)(1), but not civilly.
- 4. Be aware, however, of unconstitutionally excessive forfeitures in this area as a result of *United States v. Bajakajian*, 118 S.Ct. 2028 (1998). Nevertheless, some forfeitures of unreported cash may still be forfeited. See *United States v. Ahmad*, 213 F.3d 805 (4th Cir. 2000).

N. **N**eutrality Act Violations: Using a ship against a nation with which we are not at war, or even taking one built or adapted for a warlike use out of port when it has been detained by the United States for proof that it will not be used against a nation with which we are not at war, triggers civil forfeiture of the ship, by 18 U.S.C. §§ 962 and 963. For offenses post-dating 8/23/00, criminal forfeiture is triggered by 28 U.S.C. 2461.

O. **O**bscene & Immoral Matters: Obscenity violations of 18 U.S.C. §§1460-1469 trigger criminal forfeiture of property used to commit or promote the offenses by 18 U.S.C. § 1467.

P. **P**ornography & Sexual Exploitation of Children: Sexual exploitation of children in violation of 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, 2260, 2421, 2422 and 2423 triggers civil and criminal forfeiture of property used to promote or facilitate the offense, pursuant to 18 U.S.C. §§ 2253 and 2254, *except* that criminal forfeiture for violations of 2252A, 2260, 2421, 2422 and 2423 is limited

to offenses post-dating 10/30/98.

- Q. **Quarantined Vessels:** Vessels which enter within or depart from the limits of quarantine stations, grounds, or anchorages in disregard of quarantine rules and regulations, in violation of 42 U.S.C. §§ 267-69, shall forfeit to the United States not more than \$5,000, pursuant to 42 U.S.C. § 271.

On the subject of vessels, remember that *vessels involved in any offense are forfeitable by 18 U.S.C. § 2274.*

They're even forfeitable merely for running with their lights off. 19 U.S.C. § 1703.

- R. **Rhino and Tiger Part Sales:** Distribution of rhino and tiger parts triggers both civil and criminal forfeiture of the products in which the animal parts are used, pursuant to 16 U.S.C. § 5301.

- S. **Smuggling:** We can forfeit all property smuggled into the country in violation of 18 U.S.C. § 545 civilly by 18 U.S.C. § 545 and also criminally for offenses post-dating 8/23/00 by 28 U.S.C. § 2461. It is possible that criminal forfeiture is triggered even for offenses pre-dating 8/23/00. *United States v. Brigance*, 472 F.Supp. 1177, 1181 (S.D. Tex. 1979).

1. Pursuant to 18 U.S.C. § 545, we can forfeit an amount of money equivalent to the value of the smuggled merchandise. In other words, Section 545 authorizes the civil forfeiture of what we would typically call "substitute" assets.
2. We can forfeit airplanes used to smuggle in goods contrary to law, civilly by 19 U.S.C. § 1590, and also criminally for offenses post-dating 8/23/00 by 28 U.S.C. § 2461.

- T. **Telemarketing Fraud:** Telemarketing fraud in violation of 18 U.S.C. §§ 1028, 1029, 1341, 1342, 1343, and 1344, post-dating 6/23/98, triggers criminal (but not civil) forfeiture of personal property used to facilitate the offense, by 18 U.S.C. § 982(a)(8). Because there is no civil forfeiture of facilitating property, there can be no administrative forfeiture of property that facilitates telemarketing fraud.

- U. **Unlicensed Radio Transmissions:** Transmitting radio signals without a license triggers forfeiture of the transmitting equipment. 47 U.S.C. § 301.

- V. **Visa/Immigration Fraud:** We can forfeit all property used to facilitate visa and immigration fraud, in violation of 18 U.S.C. §§ 1028, 1425, 1426, 1427, 1541,

1543, 1544, and 1546, criminally pursuant to 18 U.S.C. § 982(a)(6) certainly for offenses postdating August 23, 2000, and maybe for offenses post-dating 1996. We can forfeit conveyances used to facilitate immigration violations civilly, regardless of when they occurred, pursuant to 8 U.S.C. § 1324(b).

- W. **W**alnut Importation: The importation into the U.S. of walnuts in violation of a marketing order issued by the Secretary of Agriculture triggers the civil forfeiture of an amount equal to the property imported, pursuant to 7 U.S.C. § 608. The same is true for the importation in violation of a marketing order of tomatoes, raisins, olives, prunes, avocados, mangoes, limes, grapefruit, green peppers, Irish potatoes, cucumbers, oranges, onions, dates, filberts, table grapes, and eggplants.
- X. **X**port of War Materials: Violations of the Arms Export Control Act, 22 U.S.C. § 2278, trigger civil forfeiture of the weapons involved in the violation and all conveyances used to facilitate the violation, by 22 U.S.C. § 401, and criminal forfeiture of such materials for offenses post-dating 8/23/00 pursuant to 28 U.S.C. 2461.
- Y. **Y**ellowstone National Park Hunting: Killing wild animals in Yellowstone in violation of 16 U.S.C. § 26 triggers civil forfeiture of guns, traps, and conveyances used to facilitate the offense, and, for offenses post-dating 8/23/00, criminal forfeiture pursuant to 28 U.S.C. § 2461. For killings in Yosemite National Park, see 16 U.S.C. §§ 57-58 and 60-65.
- Z. **Z**e Removal of Beer without Tax Payment: We can forfeit the real and personal property making up a brewery from which a defendant connives in the removal of beer for consumption without paying the beer tax, pursuant to 26 U.S.C. § 5673.

IV. Action Items:

- A. If your defendant made money from his crime, the proceeds are almost certainly subject to forfeiture and should be pursued, either civilly, criminally, or both.
- B. Seek criminal forfeiture of the assets forfeitable for violation of the statute you are enforcing regardless of whether you can find the particular “tainted” property.
- C. Assets of the defendant are forfeitable pursuant to various theories:
 - 1. Directly forfeitable for involvement in crime, whether as proceeds, facilitating property, or *corpus delecti* property;
 - 2. Property “traceable” to assets that were directly forfeitable;

2. Substitute assets for directly forfeitable property. This theory is usually, but not always, restricted to criminal forfeiture; and
 3. In satisfaction of a money judgment rendered in a criminal case.
- D. In criminal cases, always seek money judgments for the proceeds derived by a defendant from his offense and the money involved in his laundering or structuring offenses.
1. Always identify assets that can be seized to satisfy a money judgment regardless of whether we can tell whether they are forfeitable for involvement in an offense themselves. Regardless of whether we can find the proceeds that were actually laundered or structured, we can satisfy a money judgment out of any asset of the defendant that we can find. A money judgment allows us to reach a defendant's assets even where we cannot use the substitute assets clause.
 - a. Although I can't think of one off hand, it certainly is possible that there is a criminal forfeiture statute out there for which the forfeiture of substitute assets is not authorized.
 - b. Moreover, 18 U.S.C. § 982(b)(2) provides that the substitute assets provision may not be used where the convicted money launderer was merely an "intermediary" who handled but did not retain the money in the course of a money laundering offense.
 2. Calculating the Amount of A Money Judgment
 1. The trial court is required to calculate the amount the defendants realized from the scheme and impose a money judgment. *See United States v. Corrado*, 227 F.3d 543 (6th Cir. 2000) (*Corrado I*) (forfeiture is a mandatory aspect of the sentence; district court erred in refusing to order forfeiture of "sufficiently quantifiable" proceeds of a RICO offense); *United States v. Corrado*, 286 F.3d 934 (6th Cir. 2002) (*Corrado II*) (same).
 2. The court cannot make the calculation without a factual basis, however. It is the government's burden to prove the amount of the money judgment by a preponderance of the evidence. *See United States v. Vasquez-Ruiz*, 2002 WL 1880127 (N.D. Ill. 2002).
 3. If the proceeds of the offense were not cash, the money judgment should be based upon the value of the benefit the defendant received. *See United States v. Holland*, 160 F.3d 377, 380 (7th Cir.

1998) (money judgment in the amount equal to the value of property concealed from bankruptcy court and subsequently laundered); *Vasquez-Ruiz, supra* (money judgment for value of the free rent defendant received as proceeds of health care fraud offense).

3. Although FLU units despise hollow money judgments, they can be useful in fending off motions for return of seized property years down the road.

D. We no longer need to fit all offenses into a money laundering framework in order to forfeit the defendant's property. Nevertheless, money laundering is still an important tool to keep in your arsenal.

1. Where the crook has more money than the proceeds of the offenses we can or wish to charge, money laundering forfeitures still will be more effective, because they will entitle us to forfeit all the property involved in the offense instead of just "proceeds." But in most cases, a proceeds forfeiture likely will be sufficient to clean out the defendant's coffers.
2. Bank fraud and credit card fraud forfeitures are generally disallowed in excess of bank losses. Thus, money laundering forfeitures are still important here where bank fraud and credit card fraud are the underlying SUA.

E. Many fraud cases will involve the sale of lawful goods and services in an illegal manner. If we characterize these cases simply as wire and mail fraud cases, then we may not be able to forfeit even what the victims lost (net proceeds to the crook). But, if we characterize them as Health Care or Telemarketing fraud, then we might forfeit more than the victims lost (gross proceeds to the crook).

PROCEEDS OF ANY OFFENSE CONSTITUTING
A SPECIFIED UNLAWFUL ACTIVITY
ARE FORFEITABLE IN A CRIMINAL PROSECUTION.

The term "specified unlawful activity" is defined at 18 U.S.C. § 1956(c)(7) as including any act listed in the RICO statute, 18 U.S.C. § 1961(1), as a "racketeering activity," certain acts against foreign nations, and any act in violation of numerous statutes in the United States Code. They include the following crimes:

4. Any act or threat, which is chargeable under **State law** and punishable by imprisonment for more than one year, involving:
 - Murder
 - Kidnaping
 - Gambling
 - Arson
 - Robbery
 - Bribery
 - Extortion
 - Dealing in Obscene Matter
 - Dealing in a controlled substance or listed chemical
2. Any act which is indictable under the following Federal statutes, **or a conspiracy** to commit such acts:

<u>Statute</u>	<u>Offense (relating to)</u>
7 U.S.C. § 2024	Food Stamp fraud involving coupons of value less than \$5000
8 U.S.C. § 1324	Bringing in and harboring certain aliens
8 U.S.C. § 1327	Aiding or assisting aliens to enter the U.S.
8 U.S.C. § 1328	Importation of aliens for an immoral purpose
11 U.S.C. §	Bankruptcy; all sections of Title 11 except § 157
15 U.S.C. § 78ff	Securities fraud
15 U.S.C. § 78dd	Foreign Corrupt Practices Act
18 U.S.C. § 32	Aircraft destruction
18 U.S.C. § 37	Airports, violence at international airports
18 U.S.C. § 115	Threatening a Federal official
18 U.S.C. § 152	Bankruptcy fraud
18 U.S.C. § 201	Bribery
18 U.S.C. § 215	Loans, commissions or gifts for procuring
18 U.S.C. § 224	Bribery, sports
18 U.S.C. § 287	False claims, if related to a health care benefit program
18 U.S.C. § 351	Assassination of congressional or cabinet officer
18 U.S.C. §§ 471-473	Counterfeiting

18 U.S.C. §§ 500-503 Counterfeiting

18 U.S.C. § 513	Securities of States and private entities
18 U.S.C. § 542	Smuggling goods by means of false statements
18 U.S.C. § 545	Smuggling goods into the United States
18 U.S.C. § 549	Removing goods from Customs custody
18 U.S.C. § 641	Theft of public money, property, or records
18 U.S.C. § 656	Theft, embezzlement, or misapplication by bank officer or employee
18 U.S.C. § 657	Lending, credit, and insurance institutions
18 U.S.C. § 658	Farm credit agencies, property mortgaged or pledged to

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18 U.S.C. § 659	Theft from interstate shipment, if the act is felonious
18 U.S.C. § 664	Pension fund embezzlement
18 U.S.C. § 666	Theft or bribery concerning programs receiving Federal funds
18 U.S.C. § 669	Theft or embezzlement in connection with health care
18 U.S.C. §§ 793, 794, 798	Espionage
18 U.S.C. § 831	Nuclear materials, prohibited transactions involving
18 U.S.C. § 844(f) or (i)	Arson of property affecting interstate or foreign commerce
18 U.S.C. § 875	Interstate communication
18 U.S.C. §§ 891-894	Extortionate credit transactions
18 U.S.C. § 956	Conspiracy to kill, kidnap, maim, or injure certain property in a foreign country
18 U.S.C. § 1001	False statements or entries, if related to a health care benefit program
18 U.S.C. § 1005	Bank fraud
18 U.S.C. § 1006	Bank fraud
18 U.S.C. § 1007	Federal Deposit Insurance transactions
18 U.S.C. § 1014	Bank fraud false statements on loan applications
18 U.S.C. § 1027	False statements in relation to ERISA, if related to a health care benefit program
18 U.S.C. § 1028	Identity theft
18 U.S.C. § 1029	Access device fraud
18 U.S.C. § 1032	Bank fraud; concealment of assets from receiver of financial institution
18 U.S.C. § 1035	False statements health care matters
18 U.S.C. § 1084	Gambling; transmission of gambling information
18 U.S.C. § 1111	Murder
18 U.S.C. § 1114	Murder of United States law enforcement officials
18 U.S.C. § 1116	Murder of foreign officials, official guests, or internationally protected persons
18 U.S.C. § 1201	Kidnaping
18 U.S.C. § 1203	Hostage taking
18 U.S.C. § 1341	Mail fraud
18 U.S.C. § 1343	Wire fraud
18 U.S.C. § 1344	Bank fraud
18 U.S.C. § 1347	Health Care Fraud
18 U.S.C. § 1361	Government property, destruction of
18 U.S.C. § 1363	Destruction of property within the special maritime and territorial jurisdiction
18 U.S.C. § 1425	Visa fraud, unlawful procurement of citizenship or naturalization
18 U.S.C. § 1426	Visa fraud, reproduction of naturalization or citizenship papers
18 U.S.C. § 1427	Visa fraud, sale of naturalization or citizenship papers
18 U.S.C. §§ 1461-1465	Obscene matters
18 U.S.C. § 1503	Obstruction of justice
18 U.S.C. § 1510	Obstruction of criminal investigations
18 U.S.C. § 1511	Obstruction of State or local law enforcement
18 U.S.C. § 1512	Witness tampering
18 U.S.C. § 1513	Witness tampering, retaliating against a witness, victim or informant

18 U.S.C. § 1518	Obstruction of criminal investigations of health care offenses
18 U.S.C. § 1542	Passport fraud; false statement in application and use of passport
18 U.S.C. § 1543	Passport fraud; forgery and false use of passport
18 U.S.C. § 1544	Passport, misuse of
18 U.S.C. § 1546	Visa fraud and misuse of visas, permits and other documents
18 U.S.C. §§ 1581-1588	Peonage and slavery
18 U.S.C. § 1708	Mail theft
18 U.S.C. § 1751	Assassination, Presidential
18 U.S.C. § 1951	Robbery, extortion
18 U.S.C. § 1952	Racketeering
18 U.S.C. § 1953	Gambling; interstate transportation of wagering paraphernalia
18 U.S.C. § 1954	Welfare fund payments

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18 U.S.C. § 1955	Gambling businesses
18 U.S.C. §§ 1956-1957	Money laundering
18 U.S.C. § 1958	Murder-for-hire
18 U.S.C. §§ 2113-2114	Bank and postal robbery and theft
18 U.S.C. §§ 2251-2252	Sexual exploitation of children
18 U.S.C. § 2260	Sexual exploitation of children
18 U.S.C. § 2280	Maritime navigation, violence against
18 U.S.C. § 2281	Maritime, violence against fixed platforms
18 U.S.C. §§ 2312-2313	Motor vehicles, interstate transportation of stolen
18 U.S.C. §§ 2314-2315	Stolen property, interstate transportation of
18 U.S.C. § 2318	Counterfeit labels for phono records, computer programs or computer program documentation or packaging and copies of motion pictures or other audiovisual works
18 U.S.C. § 2319	Copyright infringement
18 U.S.C. § 2319A	Musical performances, unauthorized fixation of and trafficking in sound recordings and music videos of live
18 U.S.C. § 2320	Counterfeit marks, trafficking in goods or services bearing
18 U.S.C. § 2321	Motor vehicles and motor vehicle parts, trafficking in certain
18 U.S.C. § 2332	Terrorist acts abroad against United States nationals
18 U.S.C. § 2332a	Weapons of mass destruction
18 U.S.C. § 2332b	Terrorist acts transcending national boundaries
18 U.S.C. § 2339A	Terrorists, providing material support to
18 U.S.C. §§ 2341-46	Cigarettes, trafficking in contraband
18 U.S.C. §§ 2421-24	Prostitution
19 U.S.C. § 1590	Aviation smuggling
21 U.S.C. § 801 et seq.	Drugs, felonious manufacture, importation, receiving, concealment, buying, selling, or otherwise dealing in a controlled substance or listed chemical
21 U.S.C. § 848	Continuing Criminal Enterprise
21 U.S.C. § 863	Drug paraphernalia
22 U.S.C. § 2778(d)	Arms Export Control Act
29 U.S.C. § 186	Labor unions, restrictions on payments and loans to
29 U.S.C. § 501(c)	Labor union embezzlement
33 U.S.C. § 1251, et seq.	Federal Water Pollution Control Act, felony violation of the
33 U.S.C. § 1401, et seq.	Ocean Dumping Act, felony violation of the
33 U.S.C. § 1901, et seq.	Act to Prevent Pollution from Ships, felony violation of the
42 U.S.C. § 300, et seq.	Safe Drinking Water Act, felony violation of the
42 U.S.C. § 6901, et seq.	Resources Conservation and Recovery Act, felony violation of the
49 U.S.C. § 46502	Aircraft piracy
50 U.S.C. § 16	Trading with the Enemy Act
50 U.S.C. § 1705	International Emergency Economic Powers Act

3. With respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving:

- (i) the manufacture, importation, sale, or distribution of a controlled substance;
- (ii) murder, kidnaping, robbery, extortion, or destruction of property by means of explosive or fire; or
- (iii) fraud, or any scheme or attempt to defraud, by or against a foreign bank , as defined in 12 U.S.C. § 3101 (7).